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Online Investigative Practices in Child Exploitation Cases:
Utilization of Exit Opportunities

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Abstract

This article, presented as an expert-position paper, discusses the importance of utilizing and documenting Exit Opportunities while conducting Internet-related investigations where offenders seek to sexually exploit children. The process involves a clear exchange of electronic communication between the undercover operative and the offender to allow one or more opportunities for the offender to terminate the impending unlawful activities being sought. Intent and/or knowledge are critical elements in proving that a crime has occurred or that it will occur. The author proposes that, based on experiential substantiation, the utilization of a technique identified as Exit Opportunities in online investigations will provide a sound foundation in assisting prosecutorial efforts to establish intent and predilection of offenders who use technology to gain access to children for the purpose of sexual exploitation.

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Law enforcement now finds itself entering its second decade of conducting online, Internet-based investigations to combat the sexual exploitation of children. Federal and local agencies, through federal funding opportunities, have joined forces to enhance the effort. Although it is safe to say that several laws have now been passed that directly address technology-related investigations specific to the exploitation of children, the law enforcement response remains limited and sporadic.

In 1994, legislation lagged behind the proliferation of technology, posing serious problems for both the investigator and the prosecution. Fortunately, since then several federal and state laws have been enacted that address the cyber-environment directly, assisting the prosecutorial efforts. "Electronic evidence is one of the fastest developing legal frontiers. The Federal Rule of Evidence provides enough latitude to allow admissibility of electronic evidence in nearly every form for every possible document. A sound document retention policy, consistently applied, can be a party's best defense to an assertion of spoliation" (Kridel, 2001).

As was discussed in a previous article titled "A Triad of Collaboration: Internet-Related Investigative Considerations Prior to the Computer Forensic Application" (The Law Enforcement Executive Journal, Volume 4, Issue 4, November 2004), this author noted the need for standardization in the investigative

stages of Internet-related crimes in the effort to successfully prosecute offenders. Another important investigative element to add to the tactical tool bag of investigative techniques is the topic of this article: Exit Opportunities.

Experience substantiates that, in my previous and current role as an investigator, computer forensic examiner and expert witness, the success of online investigations is generally determined during the initial investigative stages. Failing to properly document all aspects of the actual investigation significantly diminishes the prosecutorial effort. Anything less is a recipe for impending failure. Additionally, consistency and standardization of techniques help to establish case precedence that will ultimately strengthen future efforts to prosecute those who use technology to gain access to children.

"Carefully managed undercover operations conducted by well-trained officers are among the most effective techniques available to law enforcement for addressing Internet Crimes Against Children (ICAC) offenses. Undercover operations, when executed and documented properly, collect virtually unassailable evidence regarding a suspect's predilection to sexually exploit children" (OJJDP/USDOJ - ICAC Task Force Program Standards, 2000).

Exit Opportunities

Exit Opportunities are operationally defined as providing an identifiable avenue for the offender to retract their effort to entice, lure, solicit or travel. The mere fact that an offender identifies the moral, legal or ethical implications of

their impending behavior provides a window of opportunity by which an investigator can develop and strengthen the predilection and intent of the offender to sexually exploit children.

The offender, in the course of online chat or electronic mail messaging, typically opens the window of opportunity. This is not to suggest that the investigator themselves cannot generate an Exit Opportunity, but is preferred that the offender set the pace and tone during the online contacts. It is critical that investigators identify and utilize the windows of opportunity that become available to establish intent or predilection.

Exit Opportunities present themselves in a manner that oft times is so obvious it cannot be missed; yet other Exit Opportunities are subtle and sometimes overlooked, therefore becoming a missed opportunity. It would be helpful at this point to examine specific examples of Exit Opportunities utilized by the author in an online investigation that took place in 1997. The investigation involved a 10 week investigation resulting in a search warrant, arrest and conviction. The duration of the investigation allowed for sufficient time and Exit Opportunities to establish predisposition that a hurried investigation would fail to provide. Referring again to the article titled "A Triad of Collaboration: Internet-Related Investigative Considerations Prior to the Computer Forensic Application" (The Law Enforcement Executive Journal, Volume 4, Issue 4, November 2004), this author reported the following:

The generation of evidence compels the officer to conduct a thorough investigation, one that is compelling to a jury. A single online conversation or email message is, by definition, probably sufficient to develop probable cause. Consider the implications of several, or many, or a multitude of conversations or emails that portray a predisposition or portray an unquestionable intent. I am not suggesting that investigations must be never-ending, but too many potentially strong investigations are cut short before sufficient evidence to prosecute is gathered. The generation of evidence includes any and all electronic exchanges that occur between the law enforcement officer and the offender(s). This generation of evidence is the substance of the Triad of Collaboration.

The basis of the investigation to be examined factually established that the offender (using the screen name GDada13552) was attempting to entice, lure, or solicit the undercover operative (using the screen name Marcl3FL while posing as a 14 year old boy) into a sexually exploitive relationship. The offender was willing to travel from Massachusetts to Florida to fulfill his need despite his clear understanding that the behavior was illegal and unacceptable by societal standards of conduct.

The first example presented for examination took place early in the investigation. The offender admitted to being

fearful of being arrested, acknowledged that sex with a 14 year old boy is against the law and that society does not accept his predilection toward sex with minors (see Figure 1.1).

First, let's state the obvious: When an adult goes online to seek sexual contacts and becomes aware that the person they are conversing with is 14 years of age - that is an Exit Opportunity. The investigator should use this technique often by restating and reinforcing that they are a minor.

GDada13552	But you know most people would say im a pervert for talking with you about sex .. what do you think about that
Marc13FL	Not 2 many people would even talk with someone 14, I'm always having people tell me to go somewhere elase on AOL
Marc13FL	ur not a pervert, why would u thionk that
GDada13552	I DON'T THINK that .. but society would .. anyway .. im fine with it .. I like you .. thats all that counts .. but you have to understand how people look at this
Gdada13552	As a 14 year old you are considered a minor .. there is nothing wrong with talking to you .. but tohave sex with you is against the law .. I know that .. and I am sorry .. but therea re some boys who are mature enough to be with a man .. you have to decide where you are ..
Marc13FL	Can I get in trouble if something happens, I don't want 2 get u in trouble either, I like u 2 much to do that, u r my friend
GDada13522	U cant get in any real trouble .. I could ☺) that is why I must trust you too
GDada13552	I don't mind if you speak of me as a friend .. but don't talk about meeting .. someone would arrest me ☺
Marc13FL	I don't want u to get arrested ever, it doesn't seem right
GDada13552	It isn't right .. but that's the way it is .. so listen.. just be discreet .. ill trust you .. you trust me .. we will be fine

Figure 1.1 Online chat with offender noting Exit Opportunity. (Edited for continuity; typographical errors represent actual chat).

When an offender expresses fear of arrest and knowledge of illicit behavior, the investigator should immediately implement the Exit Opportunity tactic. In Figure 1.1, the window of

opportunity presented itself in a fashion that allowed the investigator to convey concern for the offender. When the undercover officer expressed concern that a meeting could lead to the offender being arrested, this created an Exit Opportunity, allowing the offender an opportunity to retract their effort to entice, lure, solicit or travel. Note in Figure 1.1 that the offender, despite the concern and knowledge, abandoned the opportunity to withdraw by assuring the undercover that they must be discreet and trust each other, closing with the assurance, "we will be fine."

The conversation in Figure 1.2 opens the window to our second Exit Opportunity. Once again the offender sought confidentiality but remained focused on maintaining the relationship despite his knowledge that acting on his need could, in fact, lead to his arrest.

Marc13FL	i don't understand something u said in your letter about u love ur family and don't want to hurt them
GDada13522	i mean that what is between us is private and confidential .. that's all ..
Marc13FL	u said I shouldn't tell anybody right?
GDada13552	i don't want you to think i am ashamed because im not .. but this is between us .. remember u are aminor .. the reason i talk so freely
Gdada13552	when you are a minor .. it is a crime .. i could be arrested .. i am being totally honest here .. i wont bullshit you .. that's what i mean about hurting me or my family .. don't be careless with my email or pics
Marc13FL	i like u 2 much. maybe we should just forget about this. i don't want u 2 get arressted or anything
GDada13522	no .. its okay .. we just nned to be discreet .. this needs to be between us .. don't worry .. as long as we careful we'll be fine

Figure 1.2 Online chat with offender noting Exit Opportunity. (Edited for continuity; typographical errors represent actual chat).

Figure 1.2 revealed the author making a clear attempt to sever the developing relationship by suggesting that "maybe we should just forget about this .. i don't want u 2 get arrested or anything." Yet again the offender failed to retract their effort to entice, lure, solicit or travel, offering assurances that all will be fine as long as they are discreet.

The compelling effect of employing even a single Exit Opportunity in the investigative process cannot be underestimated. Those tasked with the duty to stand in judgment will place significant responsibility on those offenders who fail to retract their effort to entice, lure, solicit or travel to sexually exploit a child when the opportunity is so clearly presented and documented. The effect of utilizing many Exit Opportunities in a well-structured, carefully documented investigation can further enhance the prosecutorial effort.

Conclusion

The proliferation of offenders of crimes against children continues to grow. The use of technology has enabled the offender to reach more children through proprietary and commercial chat rooms and electronic mail messaging than they ever had access to prior to the creation of the Internet. The standardization and utilization of online techniques that clearly enhance the prosecutorial effort should be employed by investigators who have received specialized training specific to the online environment.

The application of Exit Opportunities in Internet-related crimes against children provides a strong foundation that an

individual is knowingly and purposefully entering into a behavior that they know is illegal. Adding this investigative technique to one's online tactical tool bag will greatly enhance the effort to bring to justice those offenders who choose to sexually exploit children.

References

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Professional Vitae

Dr. Robert DeYoung is the Master's in Management Program Coordinator and an Assistant Professor in the Department of Management at St. Thomas University, teaching across a spectrum of graduate-level managerial and research curriculum. He completed his Master's degree (MSM) at St. Thomas University, with a specialization in Human Resource Management and continued his studies, receiving a PhD in Educational Leadership from Lynn University in Boca Raton, Florida. Dr. DeYoung completed his doctoral dissertation, a naturalistic inquiry into the differences in coping strategies among parents of murdered, abducted, or long-term missing children.

Dr. DeYoung is retired from the Broward County Sheriff's Office in Fort Lauderdale, Florida. He was responsible for originating the Law Enforcement Against Child Harm (LEACH) Task Force, a federally funded, nationally recognized task force that combats Internet crimes against children. Recognized as an expert in the field of Internet crimes against children, Dr. DeYoung holds Advanced Computer Forensic Examination certifications and Advanced Computer Crimes Investigator's certification. He has instructed nationally on numerous topics related to law enforcement and management.

Dr. DeYoung is a member of the Decision Science Institute, the Southern Management Association, and the Southern Criminal Justice Association. Dr. DeYoung owns Forensic Recovery, a South Florida-based corporation providing expert computer forensic processes to the legal and corporate communities.

Dr. DeYoung owns Forensic Recovery, LLC, a corporation offering the legal and corporate communities computer forensic processes, including the collection, preservation, analysis, and presentation of electronic evidence in criminal investigations and civil litigations. The Courts recognize Dr. DeYoung as an expert in the field of computer forensic processes.